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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/978,579	10/18/2001	Yoshitaka Takeuchi	35.C15884	5217
5514	7590	07/28/2005	EXAMINER	
FITZPATRICK CELLA HARPER & SCINTO			WHIPKEY, JASON T	
30 ROCKEFELLER PLAZA				
NEW YORK, NY 10112			ART UNIT	PAPER NUMBER
			2612	

DATE MAILED: 07/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/978,579

Applicant(s)

TAKEUCHI, YOSHITAKA

Examiner

Jason T. Whipkey

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4 and 5 is/are rejected.
- 7) ☒ Claim(s) 3 and 6 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 October 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed January 11, 2005, have been fully considered but they are not persuasive.

With regard to claim 1, Applicant argued that McGarvey discloses generating white balance data from the same image that is picked up and stored. Applicant is incorrect. In paragraph 24, McGarvey states:

The present invention allows the user to perform the white card photography only once per venue. The white balance setting for each venue is determined and stored in a file named by the user. The file can be created/located in the camera white balance memory 36 and/or in the removable memory card 32 and duplicated on a separate computer 38 ... When the user returns to the venue, the user can select the named white balance file, and that file will be used to perform the white balance correction for future images until the setting is cancelled or changed.

The McGarvey reference therefore anticipates the amended claim, because McGarvey's device obtains first and second image data from different objects — the white card and the actual subject — at different times.

Specification

2. The abstract of the disclosure is objected to because it begins with the text, "An object is to provide". Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 2, and 5 are rejected under 35 U.S.C. 102(e) as being anticipated by McGarvey (U.S. Patent Application Publication No. 2002/0130959).

Regarding **claim 1**, McGarvey discloses an image pickup apparatus comprising:

a memory (70 in Figure 2) for storing as white data (a white card used as a white reference; see paragraphs 24 and 25) first image data (a “resulting white balance” calculated¹; see paragraph 25, line 8) obtained from an image pickup element (image sensor 16 in Figure 1); and

a control unit (memory card interface 31) for converting second image data (i.e., a traditional image of a subject) either (i) obtained from an object different from that of the first image data (the image is of an actual subject, as opposed to the white card) or (ii) obtained at a timing different from that of the first image data (the image of the actual subject is taken after the image of the white card; see paragraph 24), wherein said second image data is obtained from

¹In claim 4, for example, Applicant uses the term “image data” to denote a calculation resulting from raw image data. The examiner will use the term likewise.

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the image pickup element and stored into a file (see paragraph 21, lines 11-13) so that the first image data stored in said memory is in an area different from that of the second image data (the white balance memory 36 stores white balance data, while memory card 32 stores image data).

Regarding **claim 2**, McGarvey discloses:

said memory stores a plurality of first image data as white balance data (McGarvey teaches that multiple white balance settings may be stored simultaneously; see paragraph 24).

Regarding **claim 5**, McGarvey discloses:

the first image data is image data of a central portion of an image picked up by the image pickup element (McGarvey teaches that a white card or other object is positioned in the center of the image for white balancing [see paragraph 17] and that the white balance setting is determined based on that card [see paragraph 23]).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over McGarvey in view of Lin (U.S. Patent No. 6,642,962).

Claim 4 may be treated like claim 1. However, McGarvey is silent with regard to using an average value of each color component as white data.

Lin discloses a processor for a digital camera, as shown in Figure 3. The processor calculates averages for each color in a frame for use in white balancing (column 13, lines 12-15). An advantage of using an average of each color in a frame is that anomalous colors and subjects are prevented from disrupting the overall white balance. For this reason, it would have been obvious at the time of invention to have McGarvey's camera calculate an average of each color in a frame for use in white balancing.

Allowable Subject Matter

7. Claims 3 and 6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Regarding claim 3, no prior art could be located that teaches or fairly suggests an image pickup apparatus that captures and stores first image data as white data, captures second image data and stores it in a file with the first image data, and determines what in the second image data should be displayed on a display in order to adjust the white balance of the first image data.

Regarding claim 6, no prior art could be located that teaches or fairly suggests an image pickup apparatus that captures and stores first image data as white data, captures second image

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data and stores it in a file with the first image data, wherein the white data of the first image data is not a white balance adjustment value for adjusting the second image data.

8. Claim 7 is allowed.

No prior art could be located that teaches or fairly suggests an image pickup apparatus that stores reference data and specific data captured using two different light sources, wherein a control device reads out an image file containing white balance data and corrects the *white balance data* using the reference data and the specific data.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.

10. Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason Whipkey, whose telephone number is (571) 272-7321. The examiner can normally be reached Monday through Friday from 9:00 A.M. to 5:30 P.M. eastern daylight time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thai Tran, can be reached at (571) 272-7382. The fax phone number for the organization where this application is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JTW
JTW
July 18, 2005


THAI TRAN
PRIMARY EXAMINER